

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**ISO-New England Inc. and
New England Power Pool**

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Docket Nos. ER14-1050-000, -001

**MOTION TO INTERVENE AND COMMENTS OF THE
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.
AND THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 214, the Commission’s Combined Notice of Filings #2, dated January 17, 2014, and the Commission’s January 23, 2014, Notice of Extension of Time, the New England Power Generators Association, Inc. (“NEPGA”)¹ and the Electric Power Supply Association (“EPSA”) hereby file this Motion to Intervene and Comments in response to the ISO New England, Inc.’s (“ISO-NE”) Performance Incentive proposal, as filed by ISO-NE on January 17, 2014, in the above-captioned proceeding.

I. Motion to Intervene and Communications

NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA’s member companies represent approximately 27,000 megawatts of installed capacity throughout the New England region.

¹ The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. As active participants in the ISO-NE capacity and wholesale electricity markets, NEPGA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

As active participants in the ISO-NE capacity and wholesale electricity markets, NEPGA's and EPSA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding. All correspondence and communications related to this proceeding should be addressed to the following individuals:

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II. Background

On January 17, 2014, ISO-NE and NEPOOL filed two alternative versions of Market Rule changes intended to improve the operating performance of capacity resources in New England. NEPOOL and ISO-NE each filed several testimonies in support of their respective proposals. Among the several testimonies is the testimony of Peter Brandien,² Vice President of System Operations for ISO-NE (“Brandien”), to which NEPGA and EPSA respond, in part, in these Comments.

III. Comments

A. Proper Market Price Signals and Clearing Prices Are the Only Efficient Way to Procure the Generator Characteristics and Capabilities Needed For System Reliability

Brandien testifies about the ability of New England generators to respond to ISO-NE dispatch instructions. According to Brandien, historic generator dispatch response rates reflect a lack of “incentives to perform.”³ NEPGA and EPSA agree with the general principle behind his opinion - that the capacity, energy and ancillary markets are intended to provide generators with revenues sufficient to allow them to provide ISO-NE with the unit characteristics and capabilities needed to maintain system reliability. The apparent failure of the ISO-NE markets to satisfy this principle is the cause of the resource response rates the ISO considers “poor performance.” New England market price signals and clearing prices dictate operational capabilities – and to the extent the observed response rates are insufficient to provide the level of operational responsiveness the ISO desires, the markets should be reformed to allow for clearing prices sufficient to produce the desired level of incentives.

² *Testimony of Peter Brandien*, Docket No. ER14-1050-000 (filed January 17, 2014) (“Brandien Testimony”).

³ Brandien Testimony at 4.

Generator performance is driven by a desire to provide electricity service to meet consumer demand which is intended to be reflected through competitive wholesale market prices for capacity, energy and ancillary services. NEPGA and EPSA strongly underscore the obvious fact that generators are in the business of producing electricity, and must receive sufficient revenues to justify operations. Generators simply cannot sustainably run at a loss. One of the hallmarks of the competitive electricity markets promoted by FERC is the principle that generators receive no guarantee of cost recovery or returns, but must instead compete against their peers at competitive wholesale market prices to provide the desired service at the lowest cost. Generators in New England are no exception to this principle and have actively participated on a policy and design level as well as on a commercial and operational level to provide the resources necessary to maintain overall adequacy of supply as well as operational reliability and competitive prices for consumers. NEPGA and EPSA agree with ISO-NE that improvements are necessary to the region's electricity markets to, among other things, clearly define the capacity product and the operational products the ISO requires, and assure appropriate investment and performance to provide the desired attributes through the marketplace. To the extent ISO-NE has identified operational "failures" and "poor performance," these are not an indication of broad generator abdication of performance obligations but a market design not fully specifying and sending price signals for the resource attributes the ISO desires.

NEPGA and EPSA do not have access to the dispatch response rate information and data ISO-NE discusses in its filing, and therefore cannot possibly evaluate the information and data to the extent ISO-NE has. We, however, offer some historical context to the generator dispatch

response rates discussed by Brandien. The following table shows the annual weighted equivalent availability factors for New England generators as reported by ISO-NE⁴:

Year	Weighted Equivalent Availability Factor
1995	79
1996	78
1997	75
1998	78
1999	81
2000	81
2001	87
2002	89
2003	88
2004	88
2005	88
2006	89
2007	90
2008	86
2009	87
2010	88
2011	86
Average	85

As can be seen from the table, the shift from a largely vertically integrated utility generation fleet to an almost entirely competitive generation market in the early 2000s brought with it significant improvements in average generator availability factors. Since that time, availability factors have remained relatively constant, with a slight decrease in more recent years. Even in the recent years, which ISO-NE has characterized as years of generator “poor performance,” generator availability has been well above average annual availabilities previously experienced in New England. ISO-NE has at times praised the ability of generators to respond to

⁴ 2005 ISO-NE Annual Markets Report at 134, available at http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/2005/index.html (for data from 1995 – 2005); 2010 ISO-NE Annual Markets Report at 85, available at http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/2010/index.html (data from 2001-2010); ISO-NE 2012 Annual Markets Report at 81, available at http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/2012/index.html (data for 2009-2011).

ISO-NE dispatch instructions during system contingencies and Shortage Events. ISO-NE's COO has reported to the NEPOOL Participants Committee that generators have responded well to ISO-NE dispatch instructions in times of system constraints, most recently in response to the December 2013 Shortage Event caused by a real-time reduction in imports and an inaccurate load forecast.

Generators want to operate when called upon by the ISO and there are numerous instances of individual actions and performance that have caused extensive financial losses for resource owners, but necessary actions were taken to support reliability and meet tariff obligations.⁵ ISO-NE has appropriately acknowledged that the revenues and price signals necessary to drive the performance attributes it seeks do not exist in today's capacity, energy and ancillary markets. Dispatch response rates are not the result of generator decisions to "pocket" revenues by choosing to under-staff their units or maintain low levels of fuel supply, but instead are a direct result of the market price signals sent by the existing market design.

ISO-NE and stakeholders have successfully agreed to put into practice several energy market improvements, including hourly offers in the Day-Ahead Energy Market ("DAEM"), hourly re-offers in the Real-Time Energy Market (each to be effective in December 2014), moving the DAEM offer and clearing deadlines earlier in the day to better accommodate natural gas procurement, increasing reserve requirements, and enhancing auditing procedures for generators, particularly quick-start units. Collectively, these changes will provide market participants with an improved ability to reflect actual, real-time costs in their offers, increase system reliability through better fuel procurement opportunities, and better reflect the actual

⁵ *E.g., Dominion Energy Marketing, Inc. and ISO-New England, Inc.*, 143 FERC ¶ 61,233, at P 25 (Commission ordering tariff changes under Section 206 of the Federal Power Act due, in part, to the potential to "suffer significant financial loss in unrecovered costs ... [i]n situations such as the one Dominion experienced in February 8 and 9, despite complying with ISO-NE directives to maintain reliability.").

capabilities of generators to respond to ISO-NE dispatch instructions. ISO-NE and its stakeholders should continue to identify and remedy market rules that interfere with the price signals and market clearing prices necessary to provide adequate incentives for efficient production and consumption.

The causes and consequences of the “Winter Reliability Program” presently in effect in ISO-NE perfectly illustrate the disconnect in New England between the costs of providing the resource characteristics and capabilities ISO-NE deems necessary to maintain operational responsiveness, and the price signals and clearing prices the ISO-NE markets presently produce. In the months preceding Winter 2013-2014, ISO-NE Operations identified potential reliability risks in the coming winter months due largely to low on-site oil inventory levels and the well known interstate pipeline capacity constraints discussed by ISO-NE and others.⁶ ISO-NE concluded that system reliability this winter relied on the oil-fired and dual-fuel generation fleet acquiring significant quantities of oil in advance of the winter. The ISO believed that, left alone, the markets would not provide sufficient revenue certainty to enable generators to procure the necessary fuel, and therefore designed and implemented the Winter Reliability Program to supplement the markets. Oil-fired and dual-fuel generation agreed to procure a significant quantity of oil, and in some cases agreed to replenish oil tanks as they became depleted, in exchange for the resource’s as-offered price per MWh-equivalent oil. These out of market payments compensated these resources for the gap in market revenues between those available to New England resources and those that procure the level of operational responsiveness ISO-NE requires.

⁶ See, generally, *ISO-New England, Inc. and NEPOOL Joint Request for Tariff Changes Under FPA Section 205*, Docket No. ER13-1851-000 (filed June 28, 2013).

Had the costs of the Winter Reliability Program been reflected in market clearing prices – or more accurately, had the market rules allowed the incremental cost to appear in price signals and clearing prices – generators would have provided the service more efficiently than was done through the Winter Reliability Program’s out of market (“OOM”) payments. Locational marginal prices (“LMPs”) in the region would have reflected market conditions by avoiding the potential distortions presented by the OOM payments. Today’s energy prices, however, are hidden through the amount of uplift that is paid and not reflected in LMPs. Were the true market prices seen, the marketplace would likely respond through additional actions for either later this winter or next.⁷ Instead, there remain open questions of what reliability situation New England will find itself in with no Winter Reliability Program next winter and no period in which the true market dynamics have been reflected in the marketplace. This is simply one recent example to highlight the true failure in New England – poor market design, not the performance of generators who are collectively meeting their performance obligations as specified by the ISO-NE Tariff and the electricity markets.

According to Brandien, generator dispatch response rates will not increase simply by “improvements to the ISO’s operating practices and markets.”⁸ NEPGA and EPSA disagree. The actual cost of maintaining supply sufficient to support consumer demand expressed through price signals and clearing prices from clearly defined products and market requirements will competitively and efficiently provide the necessary services to best meet consumer demand and ISO operational desires. Good market design, of course, also must be coupled with appropriate mitigation to support in procuring the appropriate level of generator performance and overall

⁷ *PJM Interconnection, LLC*, 146 FERC 61,078, at PP 40-41 (2014) (“PJM’s proposed waiver will ensure that marginal prices paid by consumers appropriately equal the incremental cost of servicing them, and efficient market signals . . . should provide market participants with the information necessary to make informed business decisions, including hedging fuel risk.”).

⁸ Brandien Testimony at 4.

market efficiency. ISO-NE and market participants should continue to identify and remedy the market rules that are interfering with the New England markets' ability to incent and attract the generator characteristics and capabilities the region desires.

B. NEPGA and EPSA Reiterate Support for the Adoption of a Sloped Demand Curve as Part of the ISO-NE Market Reform

The Commission recently ordered ISO-NE to file by April 1, 2014, a sloped demand curve for effect in the ninth Forward Capacity Auction (“FCA 9”).⁹ NEPGA and EPSA applaud the Commission’s directive and welcome the opportunity to work with ISO-NE and stakeholders in the on-going NEPOOL stakeholder process. We take this opportunity to reiterate our previous comments in support of the development of a sloped demand curve for the ISO-NE capacity market. As NEPGA has previously stated, the current vertical demand curve allows for relatively small deviations from the Installed Capacity Requirement to lead to inordinately large fluctuations in the FCM clearing price. This causes a “boom-and-bust” cycle in the capacity market that does not provide stable revenues for market participants, which serves as a further disincentive for investment in new resources in the ISO-NE market.¹⁰

This “boom-and-bust” result from the vertical demand curve was also cited as a chief reason why other ISOs opted to adopt the sloped demand curve as opposed to maintaining the vertical demand curve. For instance, Rana Mukerji of the New York ISO stated in his testimony at the Technical Conference on Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators¹¹ that when NYISO started their capacity

⁹ *ISO-New England, Inc.*, 146 FERC ¶ 61,038 (2014)

¹⁰ Comments of the New England Power Generators Association, Inc. in Docket No. AD13-7-000 *Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators*, filed January 8, 2014.

¹¹ Docket No. AD13-7-000. Technical Conference on Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators (“Capacity Markets Technical Conference”), Septemeber 25, 2013.

market construct, they had a vertical demand curve, “and what we had was bust and boom. When capacity is short, the prices are very high. When the capacity is even slightly long, the prices go to zero.”¹² In examining other options for their capacity market, the NYISO, assisted by the economists from the New York Public Service Commission, implemented a sloped demand curve, “which mimics the elasticity of demand.”

Additionally, Dr. David Patton, the Independent Market Monitor for ISO-NE¹³ explained that there are “three essential attributes of a well-functioning capacity market.... [N]umber one is... the sloped demand curve.” Dr. Patton continued explaining that the vertical demand curve is “an extremely damaging aspect of capacity markets” because demand is not fully participating in those markets, so “the provision of reliability has to be administrative.”¹⁴ In contrast, Dr. Patton explained that “[a] sloped demand curve... reflects the fact that as you add capacity above the minimum requirements, the probability of curtailing load goes down...”¹⁵ When asked about what is important in designing a functional capacity market, Dr. Patton stated that “the sloped demand curve is definitely something I would have in there from Day One.”¹⁶ Robert Ethier, V.P. of Market Development for ISO-NE, also recognizes the importance of a sloped demand curve stating that a sloped demand curve “better signals the need for new resources.” Mr. Ethier further explained that one “lesson learned” is that “a sloped demand curve sends valuable price signals when you’re actually short of capacity, because it puts you in the right trajectory to signaling [that] we need new capacity.”¹⁷

¹² Capacity Markets Technical Conference Transcript at 28.

¹³ Dr. Patton is also the IMM for Midcontinent Independent System Operator, Inc., ERCOT and the New York Independent System Operator.

¹⁴ *Id.* at 58.

¹⁵ *Id.* at 59-60.

¹⁶ *Id.* at 96-7.

¹⁷ *Id.* at 84.

NEPGA and EPSA reiterate NEPGA's comments regarding capacity markets in New England that "[r]evenue stability through a sloped demand curve will provide a more sustainable market that will better support long-term capital and investment decisions than a vertical demand curve. The FCM should therefore include a downward sloping demand curve to reduce volatility and increase predictability in price for both resource investors and consumers."¹⁸ Regardless of the Commission's decision in this docket, NEPGA and EPSA underscore their strong support for the development of a downward sloping demand curve and commend the Commission for mandating a proposal from the region by April 1, 2014 to be implemented by FCA 9. NEPGA and EPSA are committed to participating in those proceedings to ensure a timely implementation of an appropriate sloped demand curve regardless of the rest of the forward capacity market structure.

¹⁸ *Comments of the New England Power Generators Association, Inc.*, Docket No. AD13-7-000 *Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators* (filed January 8, 2014).

IV. CONCLUSION

Wherefore, NEPGA and EPSA respectfully request that the Commission grant its motion for leave to intervene in this proceeding, and consider NEPGA's and EPSA's comments herein.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts, February 12, 2014.

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